

Appl. No. 09/927,835
Amdt. Dated April 9, 2004
Reply to Office Action of January 13, 2004

• • R E M A R K S / A R G U M E N T S • •

The Official Action of January 13, 2004 has been thoroughly studied. Accordingly, the following remarks are believed to be sufficient to place the application into condition for allowance.

Claims 1 and 2 are pending in this application.

Claims 1 and 2 stand rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,200,299 to Heki.

For the reasons set forth below, it is submitted that each of the pending claims are allowable over Heki and therefore, the outstanding rejection of the claims as being anticipated by Heki should proper be withdrawn.

Favorable reconsideration by the Examiner is earnestly solicited.

The Examiner has relied upon Heki as disclosing a disposable undergarment that comprises:

...side edge portions, end portions, a front waist region, a rear waist region, and a crotch region (figure 1) with a pair of elastically stretchable first wings extending from the side edge portions of at least one of the front and rear waist regions (col. 7, lines 57-60), said first wings having a first proximal side edge portion and a first free side edge portion being provided with means to connect the front and rear waist regions to each other (7), said first proximal side edge portions being contiguous to the transversely opposite side edge portions of the crotch region (figure 1) and a stretch stress generated in the first wings as the front and rear waist regions are connected to each other is exerted upon the undergarment in a waist-surrounding direction as well as in a thigh-surrounding direction (col. 9, lines 38-44) and a pair of elastically stretchable second wings extending outward from the transversely opposite side edge portion of the waist region in the transverse direction (col. 7, lines 57-60), said second wings being placed upon said first wings so that the longitudinal upper ends of the first wings and the longitudinal upper ends of the second wings

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coextensively overlap each other (figure 2), said second wings having second proximal side edge portion lying on said transversely opposite side edge portions of the waist region and second free side edge portions spaced outward from said first proximal side edge portions in said transverse direction and fixed to said first side edge portions (col. 7, lines 57-62), said second proximal side edge portions are non-contiguous to the transversely opposite side edge portions of the crotch region, and a stretch stress generated in the second wings as said front and rear waist regions are connected to each other is exerted upon the undergarment in a waist-surrounding direction as set forth in col. 15, lines 45-57.

The Examiner states that:

The first and second wings comprises extensions of the topsheet and backsheet (col. 7, lines 57-60), and the first wing is considered the extension of the backsheet (thermoplastic film) and the second wing is considered as the extension of the topsheet (nonwoven fabric) as set forth in col. 8, lines 5-9.

The Examiner's reliance upon Heki seems to be in error.

On one hand the Examiner relies upon Heki as teaching first wings that have free side edge portions that are "provided with means to connect the front and rear waist regions to each other (7)," which "means" are the fasteners 7.

On the other hand, the Examiner relies upon Figure 2 of Heki as showing "second wings being placed upon said first wings so that the longitudinal upper ends of the first wings and the longitudinal upper ends of the second wings coextensively overlap each other."

Figure 2 of Heki is a cross-sectional view taken along section line A-A in Fig. 1.

The Examiner will note that section line A-A is at the crotch region in Fig. 1 and cannot be relied upon as showing that the second wings are placed upon the first wings so that the longitudinal

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upper ends of the first wings and the longitudinal upper ends of the second wings coextensively overlap each other – as the Examiner states.

It is accordingly submitted that the Examiner's reliance upon Heki as regards the position that "said second wings being placed upon said first wings so that the longitudinal upper ends of the first wings and the longitudinal upper ends of the second wings coextensively overlap each other (figure 2)," is unfounded.

Independent claim 1 requires, in part, that the first proximal side edge portions of the first wings are contiguous to the transversely opposite side edge portions of the crotch region and that the second proximal side edge portions of the second wings are non-contiguous to the transversely opposite side edge portions of the crotch region. This structure which is shown in Figs. 1 and 5 is not taught by Heki.

Column 7, lines 57-60 of Heki which the Examiner relies upon repeatedly recites:

The ear parts 6 may be formed integrally with the absorbent part 3 by projecting the respective upper side portions of the top sheet 8 and the back sheet 10 outward in lugs having the shape of the ear parts, and directly joining together the projecting lugs of the top sheet 8 and the back sheet 10.

From this portion of Heki no conclusion can be made as to the orientation or alignment of any of the edges of the ear portions formed by the topsheet and backsheet.

Accordingly it is submitted that Heki fails to teach second wings that are placed upon first wings so that longitudinal upper ends of the first wings and longitudinal upper ends of the second wings coextensively overlap each other. Moreover, Heki fails to teach proximal side edge portions

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of the first wings that are contiguous to the transversely opposite side edge portions of the crotch region and that the second proximal side edge portions of the second wings that are non-contiguous to the transversely opposite side edge portions of the crotch region.

It is submitted that the Examiner's position and reliance upon Heki is inconsistent.

In this regard, if the Examiner maintains her reliance upon Heki as teaching that: 1) a stretch stress generated in the first wings as the front and rear waist regions are connected to each other is exerted upon the undergarment in a waist-surrounding direction as well as in a thigh-surrounding direction; and 2) a stretch stress generated in the second wings as said front and rear waist regions are connected to each other is exerted upon the undergarment in a waist-surrounding direction, then the Examiner cannot rely upon the ears of Heki as being formed by co-extensive overlapping portions of the topsheet and bottom sheet. Such reliance would clearly be contrary to Heki who teaches that it is the stress relaxing structure 20 that provides for the distribution of stress forces required by Heki. Note, the stress relaxing structure 20 of Heki only occupies a limited area of the central portion of the ears 6, so that it cannot be defined by overlapping portions of the topsheet and backsheet.

In the Official Action of July 31, 2003 the Examiner took the position that the second wing of Heki was easily stretchable and that the first wing of Heki was not as easily stretched.

This position is inconsistent with the Examiner's present position that the swings are formed by overlapping portions of the topsheet and backsheet, unless it can be shown that Heki teaches that the topsheet has a different stretch stress than the backsheet.

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In the Official Action of July 31, 2003 and on page 4 of the present Official Action the Examiner took the position that the transverse dimension of the first wings is greater than the transverse dimension of the second wings.

This position is also inconsistent with the Examiner's present position.

In the Official Action of July 31, 2003 the Examiner the Examiner relied upon elements (ears) 6 of Heki as reading on applicants' claimed first wings and element (stress relaxing structures) 20 of Heki as reading on applicants' claimed second wings.

The position is inconsistent with the Examiner's present position that coextensive extensions of the topsheet and back sheet define the first and second wings.

The inconsistency in the Examiner's position raises serious questions as to what Heki fairly teaches to one skilled in the art.

It would seem that a prior art reference would have to teach one thing or another to one skilled in the art. Otherwise, it would seem that the teachings of the prior art reference were non-enabling and one would never know what such a prior art reference actually taught.

It is submitted that Heki fails to anticipate applicants' claimed invention.

It is moreover submitted that the Examiner's reliance upon Heki is in error and inconsistent throughout the prosecution.

Based upon the above distinctions between Heki the present invention, and the overall teachings of Heki, properly considered as a whole, it is respectfully submitted that the Examiner

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cannot rely upon Heki as required under 35 U.S.C. §102 as anticipating applicants' claimed invention.

It is, therefore, submitted that any reliance Heki would be improper inasmuch as Heki does not remotely anticipate, teach, suggest or render obvious the present invention.

It is submitted that the claims, as now amended, and the discussion contained herein clearly show that the claimed invention is novel and neither anticipated nor obvious over the teachings of Heki and the outstanding rejection of the claims should hence be withdrawn.

Therefore, reconsideration and withdrawal of the outstanding rejection of the claims and an early allowance of the claims is believed to be in order.

It is believed that the above represents a complete response to the Official Action and reconsideration is requested.


If upon consideration of the above, the Examiner should feel that there remains outstanding issues in the present application that could be resolved, the Examiner is invited to contact applicants' patent counsel at the telephone number given below to discuss such issues.

To the extent necessary, a petition for an extension of time under 37 CFR §1.136 is hereby made. Please charge the fees due in connection with the filing of this paper, including extension of

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time fees, to Deposit Account No. 12-2136 and please credit any excess fees to such deposit account.

Respectfully submitted,



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